

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Advanced Television Systems)
and Their Impact upon the)
Existing Television Broadcasting Service)
Sixth Further Notice of)
Proposed Rulemaking)
Adopted: July 25, 1996;)
Released August 14, 1996)

MM Docket 87-268

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TO: THE COMMISSION

NOVEMBER 20, 1996

COMMENTS OF
ENGLE BROADCASTING
WPSJ-LP

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COMMENTS OF ENGLE BROADCASTING

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Engle Broadcasting owns and operates LPTV Station WPSJ-LP Channel 8 in Winslow, NJ and is part of the Philadelphia ADI. WPSJ has been broadcasting since January, 1986. Engle Broadcasting has invested over one million dollars into this station. Engle Broadcasting has a compelling interest in the Commission's decision on the implementation of DTV and associated issues.

In the Commission's Notice of July 25, 1996, the Commission recognizes some benefits the LPTV industry provides; however, the Commission is more than willing to sacrifice, some, most or all LPTV stations to accommodate DTV. Engle Broadcasting submits that sacrifice of the majority of LPTV stations is not necessary to implement DTV. The proposed method of implementation of DTV is to appease the financial position of full power broadcasters and to fetter or delete the Low Power Service.

In BC Docket No. 78-253; FCC 82-107¹, the Commission stated "We also emphasize, though, that while the rules for the low power service are intended to protect the public's expectation of service from full service stations, we do not intend to cater to full service licensee's unreasonable fears of competition from low power stations and fetter the low power service for that reason. We believe low power can provide competition that stimulates the entire telecommunications marketplace.

¹ An Inquiry into the Future Role of Low Power Television Broadcasting and Television Broadcasting and Television Translators in the national Telecommunications System
Adopted: March 4, 1982

In the summary of the same Docket (78-253; FCC 82-107) the Commission states "The LPTV service will (1) permit a fuller utilization of the broadcast spectrum, (2) allow broadcasting to maximize its potential to meet the needs of consumers." The Commission further states that "However our decision today to permit far greater program flexibility than we ever have permitted on translators also may be viewed as inaugurating a new broadcast service." It is my view that the Commission's proposed allotment approach for DTV for full service stations is inconsistent with its own rules and promises that created the LPTV service. Without a workable allotment scheme that includes low power stations, the FCC is in conflict with its own for rules for the creation of the low power service; is catering to full service stations; and by its own hand is "fettering the low power service." If the Commission adopts rules for DTV that, through that action does not assure LPTV operators continued viability in the marketplace, the Commission will be guilty of compromising the integrity and commitments of the United States Government.

The Commission recognizes the important benefits LPTV stations and TV Translators provide to the public. Engle Broadcasting believes that the Commission has underestimated the value of the LPTV service and the impact of the proposed DTV allotment.

LPTV IS AN EXISTING, OPERATING BROADCAST SERVICE PROVIDING
PUBLIC SERVICE AND INFORMATION

LPTV stations have been operating for 10 to 15 years. In that time, LPTV stations have provided diversity and programming options to the public. LPTV is serving a public need. The public has grown accustomed to viewing LPTV programming and has an expectation of the continuation of LPTV programming. Causing the majority of LPTV stations to cease operations, either permanently or temporary, will be a disruption to the public. The public does not differentiate between full service and LPTV stations when they turn on their television sets. A loss of a television station is a loss, regardless of whether the station operates under Part 73 or Part 74 of the Commission's Rules.

THE FCC HAS UNDERESTIMATED THE INVESTMENT IN LPTV

In the Proposed Rulemaking, the Commission has estimated the investment in LPTV and television translators to be between \$150 to \$250 million². The Commission lists 1,750 licensed LPTV stations and 5,050 licensed TV translators. Combined this is 6,800 stations. Under the Commission's estimates, this is an average investment of between \$22,000 and \$36,765. per station. This figure is ludicrous. The cost for a transmitter alone ranges upwards of \$70,000. This does not include engineering, installation, antennas, transmission line or studio equipment, plus any of the thousands of extras that are crucial to building a station. As stated above Engle Broadcasting has invested a million dollars into WPSJ. Engle Broadcasting is certain many other LPTV operators have a similar investment.

² MM Docket No. 87-268, Appendix C pp3.

THE FCC HAS NOT FULLY STUDIED THE EFFECT OF DTV ON LPTV

The Commission presents several conflicting estimates on the impact of the DTV Allotment on LPTV and television translators. In Par. 66, the Commission estimates 55 to 65 percent of existing LPTV stations and 80 to 90 percent of all TV translators would be able to continue to operate. In Appendix C, the Commission presents different figures (67% LPTV and 75% Translators). LPTV industry groups have stated that 80-90 percent of the LPTV stations will have to cease operation. Should the Commission adopt the proposal presented by the National Association of Broadcasters, a far greater number of LPTV stations will be abolished.

The Commission admits analyzing the impact of DTV is extremely complex. The Commission has not studied this, it has merely presented estimates and approximations. Engle Broadcasting requests that the Commission perform the required analysis to determine the complete effect of DTV on LPTV and television translators.

IMPACT OF DTV ON LPTV

Engle Broadcasting supports the proposed measures to lessen the impact of DTV on the LPTV operators, including relocation without competing applications, non-window filings and continuance of operation until the displacing station is operational. Engle Broadcasting also supports the Commission's proposal to permit LPTV operations on channels outside the proposed core digital spectrum area.

Engle Broadcasting supports the Commission's proposal to allocate a core spectrum between channel 7 and 51, provided, however that the Commission reserve space for LPTV.

Engle Broadcasting supports the Commissions plans for DTV coverage replication rather than maximization. Service replication will have less impact on the LPTV service during the conversion period. DTV stations could have temporary power restrictions during the conversion to replicate their NTSC signal. At the end of the conversion, when all stations including LPTV have converted to DTV, equalization of coverage should then take place.

Engle Broadcasting suggests the Commission require all digital and analog receiving devices have equal reception/tuning ability for frequencies both in and out of the core spectrum area, much like the equalization in television receivers of VHF and UHF frequencies.

INSUFFICIENT MEASURES

Engle Broadcasting supports any measures by the Commission to encourage multi-channel providers to carry LPTV stations. LPTV is an existing broadcast service providing programming to a diverse and in many cases underserved audience. This service should not be forced to cease operations, but rather every effort should be made to preserve it.

However, the measures proposed by the Commission to explore other policies to preserve access to LPTV programming, while encouraging on the surface, are vague. Commission incentives to encourage full-service operators to find ways to accommodate LPTV and translator stations are unlikely to be successful. The history of LPTV and cable television provides the example; there are very few LPTV stations carried on cable other than those qualifying for must carry. Without strict rules by the Commission, multi-channel providers will not make carriage space available for competitors.

Engle Broadcasting supports the Commissions proposal to consider incentives to encourage LPTV carriage by cable systems beyond the requirements in Section 614(C) of the Communications Act. Under the Cable Act of 1992, the Commission is required to "encourage cable systems to carry LPTV stations." Despite the Congressional mandate, the Commission has taken no action on this. What assurance does the LPTV operator have that the Commission will enact incentives under this proceeding?

UNDUE BURDEN PLACED ON LPTV

The transitions to DTV, as proposed by the Commission will place an undue burden on LPTV stations in several ways. The most obvious is monetary. Changing to a new channel is a very costly process. Costs include new antenna(s), transmission line, new transmitter, engineering and installation, plus advertising, logo changes on all station signage, sets and printed materials. Based upon our experience building this station, Engle Broadcasting estimates that to change from a VHF to UHF channel would cost \$300,000.00. Advertising to inform the public of the channel change will vary by market but could range as high as \$50,000.

Engle Broadcasting agrees with the Commission's proposal that new service providers should be required to compensate existing LPTV and translator licensees for their investment and for their move to another channel, if such move is possible or the cost of modification of transmission plant to remain on the air to prevent interference to the new service.

Additionally, there will be considerable confusion by the public as television stations are moved and bounced about the broadcast spectrum. Each time a station moves channels, the public will be inconvenienced and viewers disoriented. This will give an unfair advantage to competitors such as cable operators and full service stations who do not have to move channels.

An important issue for the Commission to consider is the existing, operating equipment of the LPTV station will be rendered useless and valueless. The transmission plant currently in use, particularly the antennas, will have to be replaced with no secondary use available. This will render them valueless, long before their useful life is ended. This may be construed as a governmental taking of private property, by rendering such property worthless.

Such a burden, in costs incurred, loss in value of tangible property, and loss of goodwill from the public, will place an undue, perhaps insurmountable burden on the LPTV operators. The Commission's proposal for new service providers to compensate LPTV operators for their investment is supported by Engle Broadcasting, as a means to lessen the burden. Engle Broadcasting suggests that the Commission include existing providers.

EFFICIENT USE OF SPECTRUM & PRIORITY OF LPTV OVER NEW ENTRANTS

The Commission states that with this DTV allotment there will be efficient use of spectrum so that there will be room for new entrants. Engle Broadcasting suggests that the Commission re-evaluate the proposed DTV allotment to make room for all LPTV operators.

In the event that the Commission cannot make spectrum available for all existing LPTV stations, Engle Broadcasting supports the Commission's proposal to provide LPTV operators a window to seek primary use of DTV channels once DTV channels have been allotted to full service channels, ahead of new entrants. The Commission's history of providing preference to experienced operators over new entrants supports this. LPTV operators have the experience to operate a station and should be granted preference over new entrants.

Engle Broadcasting also supports the Commission's proposal that new service providers be required to compensate displaced LPTV and translator licensees for their investment or move to another channel. Such a compensation would not be inconsistent with the Commission policies when competing applicants for a license make compensation for engineering expenses.

POSITIONS

Engle Broadcasting supports the Commission's proposal to recover the spectrum from channels 60 to 69 almost immediately and to reserve this spectrum for displaced LPTV on a temporary basis until DTV frequencies are available for LPTV use. We also support the Commission proposal to set aside channels 52-59 specifically for displaced LPTV stations operating as NTSC stations on a temporary basis until frequency is available in the core spectrum for the LPTV operator to convert to a full service DTV Part 73 station on a priority basis.

Engle Broadcasting supports the Commission's efforts to preserve the LPTV service including:

- a) A dedicated band for displaced LPTV stations to convert to full service DTV operations under Part 73;
- b) If interference from an allocated DTV station is predicted, permitting displaced LPTV operators to work with the DTV station to re-engineer the coverage of the LPTV station to reduce or eliminate the proposed interference to make it acceptable;
- c) Permitting the LPTV station to continue operations until the displacing DTV station is licensed
- d) Permitting displaced LPTV operators flexibility in applying for a channel move without competing applications
- e) In the case of a displaced LPTV which has no available frequency to move to, the first neighboring DTV operation to be licensed shall reserve space for the displaced LPTV station. That LPTV station shall be given priority to apply for the first available DTV full service frequency which will operate under Part 73.
- f) LPTV stations in major markets are likely to be the most affected by the DTV allocation. Many of these LPTV operators, because of the 1987 freeze on full power allotments in major markets, opted to apply for and build LPTV operations. Therefore, LPTV operators in the top 30 markets should have first priority in being allocated a DTV channel under part 73 when such channel becomes available, over any new entrants or additional channel for existing full service stations.

Engle Broadcasting strongly supports permitting LPTV operators to seek full service DTV licenses operating under Part 73. This will help equalize the competitive imbalance that now exists between LPTV and other program providers.

Engle Broadcasting opposes protecting VHF channels 3 and 4 for cable television set-top boxes and VCRs. Since cable television set-top boxes and VCRs do not require radiation of signals to operate, it would be a simple procedure to shield such devices from potential interference. Engle broadcasting submits that in light of spectrum limitations, reserving a channel for a shieldable device is not efficient use of spectrum.

ENGLE BROADCASTING PROPOSAL FOR DTV IMPLEMENTATION

In response to the Commission's request for comments regarding innovative methods of allocating DTV with the least harm to LPTV and television translators, Engle Broadcasting submits the following proposal. Engle Broadcasting strongly urges the Commission to consider this proposal for the following reasons: the best utilization of spectrum, the most practical approach for implementing DTV with the least amount of disruption to current services and to provide for the speediest recovery of spectrum. This concept is viable because 75 percent of households in the United States subscribe to cable and thus do not receive local broadcast stations over the air.

- a) An overall three year transition period for conversion to DTV;
- b) NTSC stations currently operating within the core spectrum will have a 60 day window period within the three year transition to convert their existing operation to DTV;

- c) NTSC stations outside the core spectrum will be assigned a channel within the core spectrum and will be able to convert any time during the three year transition. At the time of conversion, such stations will surrender the NTSC frequency within 90 days of conversion;
- d) During the DTV construction period, NTSC stations will be able to deliver programming to cable systems and other multi-channel providers, independent of the must carry rules, via temporary microwave or fiber optic link, such stations may also negotiate with LPTV operators to deliver their programming to both multi-channel providers and the general viewing public.
- e) LPTV stations displaced by DTV shall be granted carriage on cable and other multi-channel providers during the transition period until such time as a DTV frequency is made available to the LPTV station. This proposal is consistent with FCC Docket 78-253; FCC 82-107 which states; "Until and unless it becomes clear that Low Power stations are not being carried on cable systems we have no reason to believe that a 'must carry' rule of low power will be useful or necessary." The cable industry has a history of objecting to any carriage of LPTV on their systems nationwide. Now is the time for the FCC to carry out its mandate in the docket referenced above;
- f) DTV transmitters should be required to utilize Precise Frequency Control as a means of reducing interference. Precise Frequency Control maintains the carrier frequency to a tolerance of 2 cycles by use of a crystal phase-

locked to the transmitter. There are existing full service stations implementing this practice now, WGAL in Lancaster, PA among others. This practice is very successful in reducing or eliminating co-channel interference.

This proposal will save small and medium stations billions of dollars. They will not have to build and operate duplicate stations, towers antennas, transmitters, etc. No station will have to switch frequency twice. Spectrum will be available for recovery in a very short period of time. Important services like land mobile radio and LPTV will not be disrupted for any extended length of time. If LPTV stations are used during a DTV conversion, the public will be inconvenienced minimally. This proposal provides a much more efficient use of spectrum, there will be no duplication of programming and very little interference as fewer frequencies will be used. The 25 percent of households that do not subscribe to cable television will have the option of purchasing new DTV equipped television sets or a DTV set-top converter box, thus ushering in age of digital in a much more efficient and swifter manner.

Additionally, the Commission may consider reducing the bandwidth per channel to 4 or 5 MHz, thus more channels will fit into the available spectrum and at a later date, after the entire television system is digital, 6 or more MHz of bandwidth may be awarded to each station.

In areas where there are more LPTV stations than available frequencies, preference should be given to the operator who has provided service the longest and who meets certain requirements for local and public interest programming.

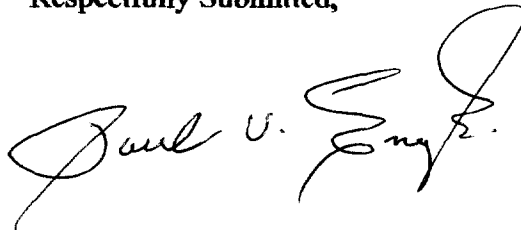
CONCLUSION

Engle Broadcasting applauds the Commission efforts to allocate the new DTV service while preserving the LPTV service. Engle Broadcasting urges the Commission to adopt any and all methods to convert all the Nation's television broadcasters to DTV with the least disruption to the public and the broadcasters, both full service and LPTV.

Engle Broadcasting recommends that the Commission adopt its proposal to have full service stations convert to DTV without the expense of a second facility. This proposal will be more efficient in spectrum usage, will allow a conversion to DTV without placing an undue burden on full service stations or LPTV stations and television translators. This proposal will also result in a speedy recovery of spectrum space.

We believe this proposal meets the Commission's goals for DTV conversion.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Paul V. Engle".

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